

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF MICHIGAN
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NOTICE OF PROPOSED AMENDMENTS TO LOCAL RULES

The Court has approved for publication and comment proposed amendments to the following Local Rules:

- LR 5.1.1, Filing and Service by Electronic Means
- LR 5.3, Civil Material Sealed Under Protective Orders
- LR 7.1, Motion Practice
- LR 83.20, Attorney Admission
- LR 83.22, Attorney Discipline
- New LR 83.23, Court Ordered Attorney Discipline; Procedures for Non-Reciprocal Suspension or Disbarment
- LR 83.31, Conduct in Federal Court Facilities

In order to be assured of consideration, comments in writing, which may include recommended changes to the proposed amendments, should be received not later than **Friday, August 12, 2005**. Comments should be addressed to Local Rules, 814 Theodore Levin United States Courthouse, 231 W. Lafayette Boulevard, Detroit, Michigan 48226 **OR** faxed to 313-234-5399.

LR 5.1.1 Filing and Service by Electronic Means

(a) Filing. The Clerk will accept only those papers that are filed, signed and verified by electronic means beginning ~~March 1, 2004~~ December 1, 2005 in accordance with this Rule. All papers filed by electronic means must comply with technical standards in the Court's Electronic Case Filing (ECF) Policies and Procedures. See Appendix ECF. Papers must also comply with the requirements of LR 5.1.

(b) Governing Rules and Procedures. All papers filed by electronic means will be governed by the Court's Local Rules, ECF Policies and Procedures, and orders of the Court. The ECF Policies and Procedures will specify those papers which may not be filed, signed and verified by electronic means.

(c) Scope and Effective Date. This Rule shall apply to all papers (not simply cases) filed ~~March 1, 2004~~ December 1, 2005 and thereafter.

(d) Service. Papers may be served through the Court's electronic transmission facilities as authorized by the Court's ECF Policies and Procedures, ~~beginning March 1, 2004~~. Transmission of the Notice of Electronic Filing constitutes service of the paper on each party in the case registered as a filing user. Service of papers on other parties must be according to the Local Rules, the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

(e) Judge's Copies. Judge's copies need not be provided unless the judge requests them. Furnishing a judge's copy shall not constitute filing.

(f) Facsimile Transmission. For purposes of this LR, filing by electronic means does not include filing by facsimile transmission.

COMMENT:

The Court will maintain electronic case files for all civil cases.

With regard to (e), parties are advised to visit the judges' practice guidelines section of the Court's web site to determine the preferences of individual judges.

Administrative Order No. 04-AO-08, filed on February 4, 2004, suspended the effective date of LR 5.1.1 from March 1, 2004, to June 1, 2004.

LR 5.3 Civil Material Sealed Under Protective Orders

(a) Filing. Documents subject to a protective order must be filed pursuant to LR 5.1. In addition, each document subject to a protective order must be placed in a separate 9 ½ x 12 inch envelope and sealed closed. Each envelope must plainly state the full case caption, title of the document enclosed and the text, "FILED UNDER SEAL PURSUANT TO A PROTECTIVE ORDER" in bold, capital letters not less than one inch high.

(b) Disposition. Sixty days after the entry of a final judgment and an appellate mandate, if appealed, attorneys must present to the court a proposed order ~~specifying whether~~ indicating that the material sealed with protective order is ~~(a) to be returned to the parties or (b) unsealed and placed in the case file~~. Failure to present the order ~~may will~~ result in the imposition of sanctions. ~~the court ordering the clerk to unseal the material and place it in the case file.~~

COMMENT: LR 5.3 makes attorneys responsible for material sealed with a protective order. ~~Upon receipt of sealed material, the Clerk's Office will provide~~

~~copies of this Rule to the submitting party.~~

Attorneys are cautioned to seal only those documents, or portions of documents, specifically ~~referenced~~ referred to in the protective order. If the documents to be sealed ~~documents~~ are exhibits to a motion, only the exhibits, and not the entire motion, are to be filed under seal. Attorneys are instructed not to fasten, staple or bind sealed and public documents together.

It is the intent of LR 5.3 that only the portions of documents containing protected information be sealed (e.g., only the 5 pages of a deposition exhibit that contain protected information, not the entire 100-page exhibit).

It is the intent of LR 5.3(b) that the attorney who files material under seal be personally responsible for seeking a return of such material. The sanctions referred to in (b) may include monetary sanctions.

Sealed settlement agreements or other material provided by statute, e.g., *Qui Tam* cases, are not covered by LR 5.3.

LR 7.1 Motion Practice

(a) Seeking Concurrence in Motions and Requests.

(1) The movant must ascertain whether the contemplated motion, or request under Federal Rule of Civil Procedure 6(b)(1), will be opposed. If the movant obtains concurrence, the parties may make the subject matter of the contemplated motion or request a matter of record by stipulated order.

(2) If concurrence is not obtained, the motion or request must state:

(A) there was a conference between attorneys or unrepresented parties in which the movant explained the nature of the motion or request and its legal basis and requested but did not obtain concurrence in the relief sought; or

(B) despite reasonable efforts specified in the motion or request, the movant was unable to conduct a conference.

(3) The court may tax costs for unreasonable withholding of consent.

* * *

COMMENT: Federal Rule of Civil Procedure 6(b) permits a party to seek an enlargement of time “with or without a motion . . . if request therefor is made before

the period originally prescribed.” Fed. R. Civ. P. 6(b)(1). Although the court generally prefers that such relief be sought by stipulation or motion, if a party chooses to seek relief by means of a “request,” LR 7.1(a) requires contact with other parties to seek concurrence in the relief requested.

[Balance of the COMMENT unchanged.]

LR 83.20 Attorney Admission

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(d) Procedure for Admission.

(1) An applicant for admission to the bar of this court must pay the fee established by the court and complete the application provided by the clerk. The following information must be included in the application:

(A) office address and telephone number;

(B) the date of admission and each jurisdiction where the applicant has been admitted to practice; and

(C) whether the applicant has ever been held in contempt, or the subject of an order of discipline as defined in LR 83.22(a)(1). If so, the applicant must state the facts and the final disposition of each such instance.

(2) A sponsor who is a member of the bar of this court must sign a declaration supporting the application for admission. The sponsor must declare that the applicant is of good character and reputation and is qualified to practice as a member of the bar of this court.

(3) If the court grants the application, the applicant must take the oath of office. A judicial officer, the clerk, or a deputy clerk may administer the oath. The clerk shall issue a certificate of admission.

* * *

(k) Attorney Renewal Fee. An attorney who has been suspended or disbarred from the bar of this court for any reason must, as a condition of reinstatement to the bar of this court, pay the attorney renewal fee established by the court.

COMMENT: Admission to practice *pro hac vice* has not been permitted in the Eastern District since 1981. The provision of LR 83.20(c)(1) is subordinate to any provision of federal law or rules to

the contrary, e.g., Rule 6 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation promulgated pursuant to 28 U.S.C. § 1407(f).

The provision of LR 83.20(k) is pursuant to action taken by the Judicial Conference in 1997, which authorized courts to charge, at their option, a fee for renewal of an attorney's admission to practice.

LR 83.22 Attorney Discipline

* * *

(c) Disciplinary Proceedings. When misconduct or allegations of misconduct that, if substantiated, would warrant discipline of an attorney who is a member of the bar of this court or has practiced in this court as permitted by LR 83.20 come to the attention of a ~~judge~~ judicial officer, including a bankruptcy judge or a magistrate judge, whether by complaint or otherwise, the ~~judge~~ judicial officer may refer the matter to the Michigan Attorney Grievance Commission for investigation and prosecution. The ~~judge~~ judicial officer may also refer the matter to another disciplinary authority that has jurisdiction over the attorney, including reference to the chief district judge for institution of ~~appropriate~~ disciplinary proceedings by this court under LR 83.23.

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(e) Discipline by Other Jurisdictions.

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(4) Administrative Suspension and Reinstatement.

An attorney who is suspended for nonpayment of dues to the State Bar of Michigan or any other bar association on which the attorney's admissions to practice in this court may be based will be automatically suspended in this court without any action by the court other than written notice to the attorney. Upon receipt of notice that the attorney has been reinstated for payment of dues and penalties, and upon payment of the court's attorney renewal fee, the attorney will be automatically reinstated in this court.

* * *

(g) Reinstatement.

(1) In cases in which an attorney has been suspended or disbarred by this court based on an action by another jurisdiction, the attorney may apply for reinstatement by filing in this court an affidavit that the jurisdiction that entered the order of discipline on which this court based its

discipline has reinstated the attorney. In cases in which an attorney has been suspended or disbarred by direct action of this court, the attorney may apply for reinstatement by filing an application for reinstatement. In each case, the affidavit or application must be accompanied by payment of the court's attorney renewal fee. The clerk will assign such affidavits and applications randomly among the active and senior judges to a panel of three judges.

(2) The attorney seeking reinstatement must prove by clear and convincing evidence that--

(A) the attorney has complied with the orders of discipline of this court and all other disciplinary authorities.

(B) the attorney has not practiced in this court during the period of disbarment or suspension and has not practiced law contrary to any other order of discipline.

(C) the attorney has not engaged in any other professional misconduct since disbarment or suspension.

(D) the attorney has the moral qualifications, competency and learning in the law required for admission to practice before this court, and that his or her resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(3) The court may invite any judge of the court, the Michigan Attorney Grievance Commission or other disciplinary counsel to present grounds why the attorney should not be reinstated and may conduct an evidentiary hearing if factual issues are contested.

(4) If the attorney seeking reinstatement has met the burden of proof in subsections (2)(A)-(D), and unless the court finds such irregularities in the proceedings conducted in the other jurisdiction so as to undermine confidence in the result, or finds that there are other compelling reasons for not reinstating the attorney, the application will be granted.

(5) In addition to payment of the attorney renewal fee, ~~The~~ the court may condition reinstatement on--

(A) payment of all or part of the costs of the disciplinary and reinstatement proceedings in this court and may impose any of the conditions of reinstatement imposed in the other jurisdiction, or such other conditions as are warranted.

(B) partial or complete restitution to the parties harmed by the misconduct that led to disbarment or suspension.

(C) if the disbarment or suspension has been for five years or more, certification

by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice after the date of disbarment or suspension.

(6) An attorney may not file an application for reinstatement under this rule within one year following denial of such an application.

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**LR 83.23 Court Ordered Attorney Discipline; Procedures for Non-Reciprocal
Suspension or Disbarment**

(a) Discipline other than suspension or disbarment. In addition to the discipline authorized by LR 83.22, a judicial officer may impose discipline, except suspension or disbarment from this court, on any attorney who engages in conduct violating the Rules of Professional Conduct, these rules, the Federal Rules of Civil or Bankruptcy Procedure, or orders of the court; or engages in other conduct unbecoming of a member of the bar of this court. Prior to the imposition of discipline, the attorney shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why the discipline should not be imposed. Upon the attorney's response, and after a hearing, if requested and allowed by the judicial officer, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order. The provisions of this rule do not preclude contempt proceedings including those pursuant to 18 U.S.C. §§ 401 and 402 and Fed.R.Crim.P. 42 or proceedings under 28 U.S.C. § 1927 and Fed.R.Civ.P. 11.

(b) Non-reciprocal suspension or disbarment.

(1) Initiation of proceedings. A judicial officer may request formal disciplinary proceedings leading to possible suspension or disbarment under LR 83.22(c).

(2) The Order to Show Cause and Response. Upon receipt of such a request, the chief judge shall cause a three judge panel to be assigned to the matter. The panel will then determine whether to issue an order to show cause and, if so, will hear and determine the matter. The order to show cause shall include the specific facts that give rise to the proposed discipline, including the date, place and nature of the alleged misconduct, and the names of all persons involved. A copy of the order and any supporting documents shall be mailed to the attorney who is the subject of investigation. The respondent shall have twenty (20) days from the entry of the order in which to respond. The response shall contain a specific admission or denial of each of the factual allegations contained in the order and, in addition, a specific statement of facts on which the respondent relies, including all other material dates, places, persons and conduct, and all documents or other supporting evidence not previously filed with the order that are relevant to the charges of misconduct alleged.

(3) The Hearing Panel. The three judicial officers on the panel shall be randomly selected, and at least one member of the panel shall be ~~an active~~ a district judge. If the alleged misconduct occurred in relation to a bankruptcy proceeding, the panel shall include one bankruptcy

judge. If the alleged misconduct occurred in relation to a magistrate judge's proceeding, the panel shall include one magistrate judge. Otherwise the panel shall consist of three district judges. In any event, the judicial officer who made the request for discipline or before whom the allegation giving rise to the hearing took place shall not be appointed to the panel. The presiding judicial officer shall be the most senior active district judge and shall have the authority to resolve all issues of procedure and evidence that arise during the course of the proceeding.

(4) **Notice of the Hearing.** The respondent shall be provided with at least twenty (20) days written notice of the hearing. The notice shall contain the date and location of the hearing and a statement that the attorney is entitled to be represented by counsel, to present witnesses and other evidence, and to confront and cross examine adverse witnesses.

(5) **The Hearing.** The chief judge may appoint an attorney to present the evidence supporting the allegations giving rise to the request for discipline. An attorney appointed under this rule will be paid at a rate equal to minimum Criminal Justice Act (CJA) rates. All witnesses shall testify under oath. The judicial officer who initiated the referral may be called as a witness at the hearing at the discretion of the panel. The conduct giving rise to the request for discipline shall be proven by a preponderance of the evidence. The failure of the respondent to appear at the hearing shall itself be grounds for discipline. The hearing shall be confidential and recorded. A decision of a majority of the three judge panel shall be final and binding. The panel may order the suspension or disbarment of the attorney, or any other remedy or sanction it deems appropriate. A written order shall be prepared which shall include the findings of the panel and disposition of the disciplinary charges. The order shall be a matter of public record and be sent to the respondent, the complainant and all of the jurisdictions disclosed pursuant to Local Rule 83.22(e)(1)(B).

(6) **Appeal.** The ~~complainant~~ respondent may appeal to the Sixth Circuit Court of Appeals.

(c) **Required Notice Upon Suspension or Disbarment.** Within seven (7) days after service of an order suspending or debaring an attorney from practicing law in this court, the respondent shall:

(1) Send a copy of the order to the Michigan Attorney Grievance Commission, the licensing authority of any other State in which the respondent is licensed to practice law, and the clerk of every other federal court in which the respondent is admitted to practice.

(2) Notify all clients of the respondent in matters that may be affected by the disciplinary action in the manner prescribed by Michigan Court Rule 9.119(A), which is incorporated herein by reference; and

(3) In every matter in which the respondent is representing a client in litigation affected by the disciplinary action, send a copy of the order of discipline to all parties in the litigation.

Within fourteen (14) days after service of an order suspending or debaring an attorney from

practicing law in this court, the respondent shall file an affidavit with the Clerk of this Court certifying compliance with this subrule in the form and manner prescribed by Michigan Court Rule 9.119(C), which is incorporated herein by reference.

(d) Reinstatement after expiration of court-imposed discipline. The procedure for reinstatement for disciplinary suspensions and disbarments imposed under this Rule is governed by LR 83.22(g).

LR 83.31 Conduct in Federal Court Facilities

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(f) Cellular Telephones and Equivalent Communication Devices (Including PDA's).

(1) Except as provided in (2) and other court orders, ~~Cellular~~ cellular telephones and equivalent communication devices (including PDA's), hereinafter "phones", are not permitted in federal court facilities.

(2) An attorney appearing in connection with any judicial proceeding or presenting evidence of bar membership may bring a phone into a federal court facility. The United States Marshal, his deputies, and court security officers may demand from any individual in possession of a phone identification in aid of enforcement of this rule, and if the identification does not satisfy the officer that the person in possession of a phone is authorized in accordance with the terms of this rule to bring the phone or use it in a court space, the officer may refuse admittance to any person in possession of a phone. The following conditions shall apply:

(A) the phone may not be used and must be turned off except in designated areas of the court facility; and

(B) the phone cannot be initiated, "answered," examined or otherwise manipulated while in a courtroom; and

(C) the phone may be used for communication only in posted designated areas; and

(D) any camera-like function or audio recording capability of a phone is subject to the provisions of (c) of this Rule (i.e, strictly prohibited except with the specific permission of the court).

(3) A district judge may institute another policy in his or her courtroom, including requiring that attorneys store their cellular telephones in chambers during court proceedings. A district judge located in a court facility at a duty station away from the Theodore Levin Courthouse in Detroit, Michigan may make appropriate orders regulating the possession and use of phones in the

buildings in which he or she presides.

(4) **Co-located Court Facilities.** Court facilities in the Eastern District of Michigan that are co-located with other government agencies shall be governed by this rule concerning the possession and use of phones in all court spaces, and the rules prescribed herein shall take precedence over other rules applicable elsewhere in the building.

(5) **Violations.**

(A) **Attorney discipline.** An attorney violating this rule may be subject to discipline, including debarment, in accordance with Local Rule 83.22 and 83.23.

(B) **Confiscation.** A violation of this rule, including without limitation unauthorized possession of a phone, use of a phone in an unauthorized space, possession of a phone in an audible mode, and failing to turn off a phone when required, **SHALL** result in immediate confiscation of the phone. Any judicial officer may order confiscation of a phone. Any United States Marshal or Deputy Marshal or court security officer may also confiscate a phone.

(C) **Contempt of court.** A violation of this rule may be punished as criminal contempt of court. A violation that disrupts a judicial proceeding may be punished by summary proceedings.

(6) **Relief from confiscation of a phone.** An attorney whose phone has been confiscated may apply in writing within twenty-eight (28) days after confiscation for return of the phone. The application shall be made to the judicial officer whose proceedings were disturbed by the violation, or, if there is no such judicial officer, to the chief judge. The judicial officer may grant or refuse the request. If the judicial officer determines that no violation of this rule occurred, he or she shall order the phone returned. If a violation has occurred and the request for return is granted, the judicial officer shall assess an appropriate monetary payment as a condition of returning the phone. Confiscated phones that are not returned, either because no request has been made within the time provided or the request for return has been denied, shall be disposed of in a manner directed by the chief judge.

(7) Any attorney bringing in a phone shall be determined to have consented to the provisions of this rule.